

MEMORANDUM



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TO: Docket Control

FROM: Steven M. Olea  
Director  
Utilities Division

*EA for SMD*

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AZ CORP COMMISSION  
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DATE: December 29, 2014

RE: IN THE MATTER OF TALK AMERICA SERVICES, LLC FOR APPROVAL OF AN APPLICATION AND PETITION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELCOMMUNICATIONS SERVICES (DOCKET NO. T-20918A-14-0342)

Attached is the Staff Report for the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide the following services:

- Resold Local Exchange Telecommunications Services
- Resold Long Distance Telecommunications Services

Staff is recommending approval of the Application with conditions.

ORIGINAL

SMO: MAC:vsc

Originator: Matt Connolly

Arizona Corporation Commission

DOCKETED

DEC 29 2014

DOCKETED BY	<i>[Signature]</i>
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DOCKET NO.: T-20918A-14-0342

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STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

TALK AMERICA SERVICES, LLC  
DOCKET NO. T-20918A-14-0342

IN THE MATTER OF TALK AMERICA SERVICES, LLC FOR APPROVAL OF AN  
APPLICATION AND PETITION FOR CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE INTRASTATE TELCOMMUNICATIONS SERVICES

December 29, 2014

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## STAFF ACKNOWLEDGMENT

The Staff Report for Talk America Services, LLC, Docket No. T-20918A-14-0342 was the responsibility of the Staff member listed below. Matt Connolly was responsible for the review and analysis of the Talk America Services, LLC Application for a Certificate of Convenience and Necessity to provide Resold Local Exchange and Long Distance Services within the State of Arizona, in addition to the petition for a determination that its proposed services should be classified as competitive.

A handwritten signature in black ink, appearing to read "Matt Connolly", is written over a horizontal line.

Matt Connolly  
Executive Consultant II

## 1. INTRODUCTION

On September 19, 2014, Talk America Services, LLC ("TAS" or "Applicant" or "Company") filed an Application for a Certificate of Convenience and Necessity ("CC&N") to provide resold local exchange and interexchange telecommunications services within the State of Arizona. The Applicant also petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive. TAS's September 19, 2014 Application included a proposed tariff for the services it is requesting the authority to provide.

On November 5, 2014, Staff issued its First Set of Data Requests to TAS. Responses to Staff's First Set of Data Requests and six replacement pages to TAS's proposed tariff were received from the Applicant on November 13, 2014. On November 20, 2014, Staff issued its Second Set of Data Requests. Responses to Staff's Second Set of Data Requests which included three proposed replacement tariff pages and *pro forma* financial statements were received from TAS on November 24, 2014. On December 5, 2014, TAS docketed a Notice of Filing and Affidavit of Publication.

Staff's review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

## 2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

TAS, formed on June 27, 2014, is a foreign limited liability organized under the laws of the State of Delaware. TAS' headquarters is located at 4001 N. Rodney Parham Rd., Little Rock, AR 72212. In response to Staff Data Requests 2.3 and 2.6, TAS stated Communication Sales & Leasing, Inc. (a newly formed Maryland corporation and currently an indirect subsidiary of Windstream Holdings, Inc.) will be the publicly traded parent company of TAS and CSL Capital. CSL Capital will be a direct subsidiary of Communication Sales & Leasing, Inc. and the direct holding company of TAS, making TAS an indirect subsidiary of Communication Sales & Leasing, Inc.

The Applicant indicated it is in the process of obtaining authority to provide intrastate telecommunications services in all of the contiguous United States and the District of Columbia. The Applicant is not seeking authority to provide any services in Alaska and Hawaii. In response to Staff's Data Request 1.13, the Applicant indicated that it has already received authority to provide intrastate telecommunications services in Alabama, Arkansas, Iowa, North Carolina, Vermont, Washington, and Wisconsin.

Staff obtained information related to the Public Utility Commissions in the aforementioned jurisdictions to determine if TAS has the authority to provide telecommunications services as stated by the Applicant. The information Staff obtained indicates that TAS is authorized to provide telecommunications services in these jurisdictions.

Under a Master Wholesale Agreement with Windstream's Competitive Local Exchange Companies ("Windstream CLECs" (see Attachment A)), TAS would offer resold local exchange and long distance telecommunications services to residential end-user customers in Arizona. TAS does not intend to serve any business customers at this time. According to Attachment E of the

Application, the key officers and management of TAS have a combined (46) forty-six years' experience in the telecommunications industry. In response to Staff's Data Request 1.1, TAS indicated it does not plan to have employees in Arizona. In response to Staff's Data Request 1.16 TAS indicated its customer support center will be located in Richmond, Virginia. Customers will be able to contact the support center using the toll free number of 855-546-5000 Monday through Friday between the hours of 8:00 am and 8:00 pm Eastern Standard Time and Saturday between the hours of 8:00 am and 5:00 pm. TAS indicated that as its residential customer base increases it will increase the hours of support availability.

In response to Staff's Data Requests 1.18 and 2.8, TAS stated it will not have any maintenance and repair employees located in Arizona and is entering into a Master Wholesale Agreement with the Windstream CLECs which will incorporate all maintenance and repair requests. The Master Wholesale Agreement is to be executed prior to TAS providing services. Should a customer report a repair need, TAS will coordinate with the Windstream CLEC companies to resolve the request.

In response to Staff's Data Request 1.17, TAS indicated customers may call the 855-546-5000 number or reach the company in writing should they wish to lodge a complaint. TAS states that all complaints will be addressed promptly and in accordance with Arizona Administrative Code ("A.A.C.") R14-2-212.

Based on the above information, Staff believes TAS possesses the technical capabilities to provide the services it is requesting the authority to provide in Arizona.

### **3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

A protective agreement was signed prior to the Applicant providing its financial statements. The Applicant provided *pro-forma* financial statements of TAS for the two years ending December 31, 2012 and December 31, 2013. The financial statements for year ending 2012 list total assets of \$29,444,000; total equity of \$16,314,000 and net income of \$24,513,000. The financial statements for year ending 2013 list total assets of \$21,881,000; total equity of \$12,222,000 and net income of \$16,513,000.

### **4. ESTABLISHING RATES AND CHARGES**

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided that the rate for the service is not less than the

Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. The Applicant indicated that at the end of the first twelve months of operation the net book value of all Arizona assets that could be used in the provision of telecommunications service to Arizona customers will be \$0. Accordingly, the company's fair value rate base is too small to be useful in a fair value analysis.

TAS submitted its proposed Arizona Tariff No. 1 to support its Application. TAS also provided additional rate comparison information of other competitive local exchange carriers and the incumbent local exchange provider in the State of Arizona. Staff has reviewed the proposed rates and believes they are comparable to the rates charged by competitive local carriers and local incumbent carriers operating in the State of Arizona. The rate to be ultimately charged by the Applicant will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the company, the fair value rate base information provided should not be given substantial weight in this analysis.

## **5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES**

Issues related to the provision of Local Exchange service are discussed below.

### *5.1 Number Portability*

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

### *5.2 Provision Of Basic Telephone Service And Universal Service*

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

### *5.3 Quality Of Service*

In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that the Applicant should be ordered to abide by the same



quality of service standards that were approved by the Commission for Qwest d/b/a CenturyLink QC ("CenturyLink") in Docket No. T-01051B-13-0199 (Decision No. 74208).

#### *5.4 Access To Alternative Local Exchange Service Providers*

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

#### *5.5 911 Service*

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission ("FCC") 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

#### *5.6 Custom Local Area Signaling Services*

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

### **6. REVIEW OF COMPLAINT INFORMATION**

The Consumer Services Section of the Utilities Division reports that there have been no complaints, inquiries, or opinions filed against TAS from January 1, 2011 to October 1, 2014. Consumer Services also reports that TAS is in Good Standing with the Corporations Division of the Commission. Further, a search of the Federal Communications Commission's ("FCC") website found that there have been no complaints filed against TAS.

The Applicant indicated in its Application and in response to Staff Data Request 1.13 that TAS has not had an Application for authority to provide service denied in any state or jurisdiction. The Applicant indicated that none of its officers, directors or partners have been or are currently involved in any civil or criminal investigation or been convicted of any criminal acts within the past ten (10) years.

## **7. COMPETITIVE SERVICES ANALYSIS**

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

### **7.1 *Competitive Services Analysis For Local Exchange Services***

#### **7.1.1 A description of the general economic conditions that exist, which make the relevant market for the service one that is competitive.**

The statewide local exchange market that the Applicant seeks to enter is one in which a number of CLECs have been authorized to provide local exchange service in areas previously served only by ILECs. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, will have to compete with those existing companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and Voice over the Internet Protocol ("VoIP") service providers. This may also be the case in areas served by independent ILECs.

#### **7.1.2 The number of alternative providers of the service.**

CenturyLink and various independent ILECs provide local exchange service in the State. CLECs and local exchange resellers are also providing local exchange service. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and VoIP service providers. This may also be the case in portions of the independent ILECs' service territories.

#### **7.1.3 The estimated market share held by each alternative provider of the service.**

CenturyLink and CLECs are the primary providers of local exchange service in CenturyLink's Service territories. Independent ILECs are the primary providers of local exchange service in their service territories.

#### **7.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.**

Please refer to Attachment A.

**7.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

ILECs have the ability to offer the same services that the Applicant has requested the authority to provide in their respective service territories. Similarly, many of the CLECs, local exchange service resellers, wireless carriers and VoIP service providers also offer substantially the same services.

**7.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories. Competition exists in most urban markets, but to a lesser degree in rural areas of the state.
- b. One in which new entrants will be dependent upon ILECs and other CLECs:
  1. To terminate traffic to customers.
  2. To provide essential local exchange service elements until the entrant's own network has been built.
  3. For interconnection.
- c. One in which existing ILECs and CLECs have had an existing relationship with their customers that the Applicant will have to overcome if it wants to compete in the market and one in which the Applicant will not have a history in the Arizona local exchange service market.
- d. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

**7.2 *Competitive Services Analysis For Interexchange Services***

**7.2.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that is competitive.**

The statewide interexchange market that the Applicant seeks to enter is one in which numerous facilities-based interexchange carriers and resellers of interexchange service have been authorized to provide service throughout the State. The market the Applicant seeks to enter is also served by wireless carriers and VoIP providers.

The Applicant will be a new entrant in this market and, as such, will have to compete with those existing companies in order to obtain customers.

**7.2.2 The number of alternative providers of the service.**

There are a large number of facilities-based interexchange carriers and resellers providing interexchange service throughout the State. The market the Applicant seeks to enter is also served by wireless carriers and VoIP service providers.

**7.2.3 The estimated market share held by each alternative provider of the service.**

Facilities-based interexchange carriers, interexchange service resellers, independent ILECs, CLECs, wireless carriers and VoIP providers all hold a portion of the interexchange market.

**7.2.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.**

Please refer to Attachment A.

**7.2.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

Both facilities-based interexchange carriers and interexchange service resellers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly, many of the ILECs and CLECs offer similar interexchange services. The market the Applicant seeks to enter is also served by wireless carriers and VoIP service providers.

**7.2.6 Other indicators of market power which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.
- c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

- d. One in which the share of the market held by wireless carriers has increased over time, while that held by wireline carriers has declined.

## 8. RECOMMENDATIONS

The following sections contain Staff recommendations on the Application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

### 8.1 *Recommendations On The Application For A CC&N*

Staff recommends that Applicant's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant comply with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abide by the quality of service standards that were approved by the Commission for Qwest d/b/a CenturyLink QC in Docket No. T-01051B-13-0199;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. The Applicant indicated that at the end of the first twelve months of operation the net book value of all Arizona assets that could be used in the provision of telecommunications service to Arizona customers will be \$0. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers and local incumbent carriers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the company, the fair value information provided was not given substantial weight in this analysis;

7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated; and
9. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. If the Applicant does not provide local exchange service to end users within (3) three years from the date of the Order in this docket, that the Applicant be required to notify the Commission of this fact and to request cancellation of its CC&N through a filing made in this docket.
2. The Applicant shall docket conforming tariff pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service to its first customer, whichever comes first. The tariffs submitted shall coincide with the Application.
3. The Applicant shall notify the Commission through a compliance filing within 30 days of the commencement of service to its first end-user customer; and
4. The Applicant shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

*8.2 Recommendation On The Applicant's Petition To Have Its Proposed Services Classified As Competitive*

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or long distance service markets. Therefore, the Applicant currently has no market power in the local exchange service market where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

Attachment A

The following are the Windstream CLECs whose services Talk America Services, LLC will resell in Arizona with the corresponding Decisions and granted authority:

**McLeodUSA Telecommunications Services, LLC.**

4001 N Rodney Parham Road  
Little Rock, Arkansas 72212

- Granted authority to provide competitive interLATA/intraLATA resold telecommunications services in Decision No. 61001 dated July 16, 1998. Granted authority to provide competitive resold and facilities-based local exchange and exchange access telecommunications services in Decision No. 62627 dated June 9, 2000.

**Paetec Communications, Inc.**

4001 N Rodney Parham Road  
Little Rock, Arkansas 72212

- Granted authority to provide competitive interLATA/intraLATA resold telecommunications services, except local exchange services in Decision No. 62458 dated April 14, 2000.

**Talk America, Inc.**

4001 N Rodney Parham Road  
Little Rock, Arkansas 72212

- Granted authority to provide competitive resold interexchange telecommunications services, except local exchange services in Decision No. 64084 dated October 4, 2001.

**Windstream Communications, Inc.**

4001 N Rodney Parham Road  
Little Rock, Arkansas 72212

- Granted authority to provide competitive resold interexchange telecommunications services in Decision No. 68965 dated September 21, 2006.